UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RONALD LOUIS BOONE,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Civil No. 97-143-B**
	)	
JOHN MORRIS, *et al.*,	)	
	)	
Defendants	)	

RECOMMENDED DECISION

The plaintiff, Ronald Louis Boone, brought this action against the remaining defendants,[1] Waterville Police Chief John Morris, Detective Jeffrey Bearce, and Officers Michael Grizkewitsch, Daniel Goss, and Christian Stickney, and the City of Waterville, alleging, *inter alia*, violations of his constitutional rights following his arrest and confinement in jail pursuant to a warrant issued by the Maine Superior Court. The defendants have moved for a summary judgment on the complaint, and Boone has failed to respond.[2] For the reasons set forth below, I recommend that the Court grant the motion.

I. Summary Judgment

Pending before the Court is the defendants' motion for a summary judgment on the plaintiff's complaint. Boone has not responded to the motion. In this District, a party's failure to timely respond to a motion generally is construed as waiving any objection to it. D. Me. R. 19(c). The Federal Rules of Civil procedure require, however, that the Court examine the merits

[1] The Court previously granted the motion by former defendants Alexander and Desjardins to dismiss the plaintiff's claims against them.

[2] The Court has issued an order denying the plaintiff's motion to voluntarily dismiss the action.

of a motion for a summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, the Court will examine the merits of the defendants' motion for a summary judgment based on the defendants' statement of material facts.

A summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Background

On June 16, 1995, Boone was arrested by Waterville police pursuant to an outstanding warrant issued by the Maine Superior Court following Boone's failure to appear in court for a trial on a criminal charge. In 1993, Boone had been charged with the crime of failing to surrender a motor vehicle certificate of title upon demand by the Maine Department of Motor Vehicles. The Department sought the title pursuant to a request by one of Boone's creditors who was seeking to place a lien on Boone's assets as a result of Boone's outstanding credit card debts. When Boone failed to appear at his arraignment on the charge, the Maine District Court issued a

warrant for his arrest. When Boone subsequently was arrested and brought to court, he refused to cooperate in the arraignment proceedings and was found in contempt of court. Boone spent three days in jail until he agreed to cooperate in the proceedings. Following his arraignment, Boone was released on his personal recognizance.

Boone subsequently requested a jury trial in the matter, and his case was removed to the Maine Superior Court in Kennebec County. When, on April 12, 1995, Boone again failed to appear in court for the start of trial, a bench warrant again was issued for his arrest. Waterville police sought unsuccessfully to serve the warrant on Boone at his home. Aware that a warrant for his arrest was outstanding, however, Boone corresponded with the Waterville police and, in a letter dated June 9, 1995, threatened to sue any officer who arrested him. Boone maintained that he was not subject to the criminal charge and was not bound by the personal recognizance bond to appear in court.

On June 16, 1995, at around 4:54 p.m., Officer Grizkewitsch of the Waterville Police Department arrested Boone at the Pine Tree Mall pursuant to the outstanding warrant. Also present at the scene to provide assistance, if necessary, were Detective Bearce, and Officers Stickney and Goss. These three individuals did not aid in the arrest or play any role in taking Boone into custody, however. Chief Morris was not present at the scene. No use of force was required, although Boone was handcuffed and placed in a police cruiser by Officer Grizkewitsch. Boone concedes that no force was used against him by any of the officers.

Boone was booked at the police station, and subsequently turned over to the Kennebec County Sheriff's Office. Because the original criminal charge against Boone was not filed by the Waterville Police Department but, instead, by the Maine Department of Motor Vehicles, the

defendants had no further role in maintaining Boone in custody or in prosecuting him for the underlying criminal charge. Boone spent six days in jail prior to posting bail. He eventually pleaded *nolo contendre* to the charge, was found guilty, and was sentenced to time served.

Boone filed this complaint in the Maine Superior Court on June 13, 1997. He apparently brought the action pursuant to 42 U.S.C. § 1983 (1994), claiming violations of his constitutional rights. Among other things, Boone contends that the arrest warrant at issue was invalid and was obtained through the use of fraud by the defendants. The case was removed to this Court on July 7, 1997.

III. Discussion

Based on the above facts, and in view of the settled law on the subject, I recommend that the Court grant the defendants' motion for a summary judgment on Boone's complaint. Even viewing the limited record in a light most favorable to Boone, there appears to be no genuine issue as to any material fact; the defendants are entitled to a judgment as a matter of law.

As an initial matter, Boone's claims against the City and against Chief Morris may be dismissed. First, the City simply is not a person within the meaning of 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989). The City is immune as well for any claim under state law pursuant to the provisions of the Maine Tort Claims Act, 14 M.R.S.A. § 8104-A (Supp. 1997). No liability insurance has been shown to exist that would waive its immunity under state law. *Hegarty v. Somerset Co.*, 848 F. Supp. 257, 270 (D. Me. 1994), *aff'd in part and remanded*, 53 F.3d 1367 (1st Cir.), *cert. denied*, 116 S.Ct. 675 (1995). Second, as concerns Chief Morris, there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Morris is not alleged by Boone to have

been at the scene of his arrest, or to have participated in the incident in any way. Accordingly, any claim against him may be dismissed.

The remaining defendants may only be held liable for their own acts or omissions. *Id*. Further, those acts or omission must be shown to have been deliberately indifferent to Plaintiff's constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989). Under Maine law, an individual who fails to appear in court to answer a criminal charge commits a Class E crime for which a court may issue an arrest warrant. 17-A M.R.S.A. § 17(4) (Supp. 1997). As Boone admits, this is precisely what happened in his case. After the warrant was issued, the court retained the original and sent an attested copy to the Kennebec County Sheriff's Office. 15 M.R.S.A. §§ 603, 606 (Supp. 1997). Moreover, the record reveals that the defendants used, as required by law, "all reasonable efforts" to execute the outstanding warrant. 15 M.R.S.A. § 602 (Supp. 1997).

Significantly, Boone did not dispute at his deposition that the bench warrant was issued as a result of his failure to appear in court to answer a criminal charge, or that he in fact did not appear. He stated only his personal political view that he was not subject to the law or the arrest warrant, which he viewed as a mere "invitation" that could be declined by him. It is clear that no cause of action can arise if an arrest is made pursuant to a facially valid warrant. *Baker v. McCollan*, 443 U.S. 137, 143 (1979). Even if, as Boone contends, a warrant is defective in some way, an officer executing it can violate no civil right of the arrestee “unless the warrant is so lacking in probable cause that no officer of reasonable competence would have concluded that a warrant should issue.” *Moran v. Marker*, 889 F. Supp. 284, 286 (E.D. Mich. 1995) (quotations and citation omitted). When, as here, an arrest is made based on information supplied by one law

enforcement agency that possesses an outstanding warrant to another agency, no cause of action exists against the agency effecting the arrest based on the erroneous information unless there is fault amounting at least to gross negligence. *Roa v. City of Bethlehem*, 782 F. Supp. 1008 (E.D. Pa. 1991); *see also Pickens v. Hollowell*, 59 F.3d 1203 (11th Cir. 1995).

Boone contends that his arrest was unconstitutional and that the warrant was not based on probable cause. Yet he also concedes that he failed to appear in court. The defendant officers are protected by qualified and discretionary function immunity under federal and Maine law. The defendants correctly argue that they are entitled to qualified immunity, which shields government officers "'from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty*, 53 F.3d at 1373 (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable.'" *Id*. (quoting *Anderson*, 483 U.S. at 641). The inquiry regarding qualified immunity "takes place prior to trial, on motion for summary judgment . . . and requires no fact finding, only a ruling of law strictly for resolution by the court." *Id*. at 1373-74.[3]

The qualified immunity inquiry has two prongs. First the Court must determine whether

[3] The same standard applies to Maine law's approach to immunity. "[G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Fonte v. Collins*, 898 F.2d 284, 285 (1st Cir. 1990) (citation omitted). *See also* 14 M.R.S.A. § 8111 (Supp. 1997).

the right asserted by the plaintiff was clearly established at the time of the contested events. *Id.* at 1373. Here there is no dispute that the Fourth Amendment to the U.S. Constitution protects an individual against unreasonable seizures. This constitutes a clearly established right. The Court must, however, go one step further and determine whether the specific contours of the right were sufficiently established such that the officer could understand how the law would be applied to his or her actions *in this case*. *Anderson*, 483 U.S. at 640.

In the context of summary judgment the second prong in a qualified immunity inquiry is whether, viewing facts in a light most favorable to plaintiff, "an *objectively* reasonable officer, similarly situated, *could have believed* that the challenged . . . conduct did *not* violate" that clearly established right. *Hegarty*, 53 F.3d at 1373. (emphasis in original). I conclude that Officers Bearce, Grizkewitsch, Goss, and Stickney all are entitled to qualified immunity because "given the facts in the light most favorable to the plaintiff, the police officers have established as a matter of law, that it was reasonable for them to believe that their conduct did not violate [the plaintiff's] constitutional rights." *Fonte*, 898 F.2d at 285-286.

Boone has failed to raise a genuine issue as to whether the arrest warrant was invalid or whether the arresting officer or any of the other defendants present at the scene violated his constitutional rights in any way. These defendants have adduced sufficient evidence to support a finding as a matter of law that it was reasonable for them to believe that their conduct did not violate Boone's constitutional rights. In short, a valid warrant was issued by the court, and a valid arrest was made by one of the defendants. No excessive force is alleged to have been used on the plaintiff. There is no basis in the facts or at law for Boone's claims against any of the defendants. Boone utterly has failed to satisfy his burden at this stage of the proceedings.

IV. Conclusion

For the foregoing reasons, I recommend that the Court **GRANT** the defendants' motion for a summary judgment on the plaintiff's complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu
United States Magistrate Judge

Dated this 18th day of December, 1997.